

U.S. Department of Justice
Washington, DC 20530

Supplemental Statement

Pursuant to Section 2 of the Foreign Agents Registration Act
of 1938, as amended.

FMB No. 1105-0002
Approval Expires Oct. 31, 1996

Due Date = 2/19/91

For Six Month Period Ending 7/20/90 - 1/19/91
Insert dates

Name of Registrant **Raymond L. Britt, Jr.**

Registration No. **3549**

Business Address of Registrant

**The Manufacturers Life Insurance Company [Manulife Financial]
200 Bloor Street East
Toronto, Ontario, Canada M4W 1E5 I-REGISTRANT**

1. Has there been a change in the information previously furnished in connection with the following:

(a) If an individual:

(1) Residence address	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
(2) Citizenship	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
(3) Occupation	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

(b) If an organization:

(1) Name	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A
(2) Ownership or control	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
(3) Branch offices	Yes <input type="checkbox"/>	No <input type="checkbox"/>	

2. Explain fully all changes, if any, indicated in item 1.

N/A

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SECTION

IF THE REGISTRANT IS AN INDIVIDUAL, OMIT RESPONSE TO ITEMS 3, 4, and 5.

3. Have any persons ceased acting as partners, officers, directors or similar officials of the registrant during this 6 month reporting period? Yes ☐ No ☒

If yes, furnish the following information:

Name

Position

Date Connection
Ended

N/A

4. Have any persons become partners, officers, directors or similar officials during this 6 month reporting period?
 Yes ☐ No ☒

If yes, furnish the following information:

<i>Name</i>	<i>Residence Address</i>	<i>Citizenship</i>	<i>Position</i>	<i>Date Assumed</i>
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N/A

5. Has any person named in Item 4 rendered services directly in furtherance of the interests of any foreign principal?
 Yes ☐ No ☒

If yes, identify each such person and describe his services.

N/A

6. Have any employees or individuals other than officials, who have filed a short form registration statement, terminated their employment or connection with the registrant during this 6 month reporting period? Yes ☐ No ☒

If yes, furnish the following information:

<i>Name</i>	<i>Position or connection</i>	<i>Date terminated</i>
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N/A

7. During this 6 month reporting period, have any persons been hired as employees or in any other capacity by the registrant who rendered services to the registrant directly in furtherance of the interests of any foreign principal in other than a clerical or secretarial, or in a related or similar capacity? Yes ☐ No ☒

If yes, furnish the following information:

<i>Name</i>	<i>Residence Address</i>	<i>Position or connection</i>	<i>Date connection began</i>
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N/A

II—FOREIGN PRINCIPAL

8. Has your connection with any foreign principal ended during this 6 month reporting period? Yes ☐ No ☒

If yes, furnish the following information:

Name of foreign principal

Date of Termination

N/A

9. Have you acquired any new foreign principal during this 6 month reporting period? Yes ☐ No ☒

If yes, furnish following information:

Name and address of foreign principal

Date acquired

N/A

10. In addition to those named in Items 8 and 9, if any, list the foreign principals whom you continued to represent during the 6 month reporting period.

The Manufacturers Life Insurance Company

III—ACTIVITIES

11. During this 6 month reporting period, have you engaged in any activities for or rendered any services to any foreign principal named in Items 8, 9, and 10 of this statement? Yes ☒ No ☐

If yes, identify each such foreign principal and describe in full detail your activities and services:

Legal services related to letters and memoranda regarding proposed changes to Internal Revenue Code and Treasury regulations.

¹ The term "foreign principal" includes, in addition to those defined in section 1(b) of the Act, an individual or organization any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign government, foreign political party, foreign organization or foreign individual. (See Rule 100(a)(9)).

A registrant who represents more than one foreign principal is required to list in the statements he files under the Act only those foreign principals for whom he is not entitled to claim exemption under Section 3 of the Act. (See Rule 208.)

12. During this 6 month reporting period, have you on behalf of any foreign principal engaged in political activity² as defined below?
 Yes ☒ No ☐

**Any filings of materials covered have been completed by Mary V. Harcar
 [Registration No. 3910] Muldoon, Murphy & Faucette, Washington D.C.**

If yes, identify each such foreign principal and describe in full detail all such political activity, indicating, among other things, the relations, interests and policies sought to be influenced and the means employed to achieve this purpose. If the registrant arranged, sponsored or delivered speeches, lectures or radio and TV broadcasts, give details as to dates, places of delivery, names of speakers and subject matter.

Correspondence and discussion regarding proposed amendments to sections 842(b) and 882 of the Internal Revenue Code and Treasury Notices and regulations issued thereunder.

**NO DIRECT FILINGS FROM THIS OFFICE. ALL FILINGS COMPLETED BY M.V. HARCAR
 DISSEMINATION REPORTS FILED BY M.V. HARCAR**

13. In addition to the above described activities, if any, have you engaged in activity on your own behalf which benefits any or all of your foreign principals? Yes ☐ No ☒

If yes, describe fully.

N/A

²The term "political activities" means the dissemination of political propaganda and any other activity which the person engaging therein believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, persuade, or in any other way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party.

IV—FINANCIAL INFORMATION

14. (a) RECEIPTS—MONIES

During this 6 month reporting period, have you received from any foreign principal named in Items 8, 9 and 10 of this statement, or from any other source, for or in the interests of any such foreign principal, any contributions, income or money either as compensation or otherwise? Yes ☒ No ☐

If yes, set forth below in the required detail and separately for each foreign principal an account of such monies.³

<i>Date</i>	<i>From Whom</i>	<i>Purpose</i>	<i>Amount</i>
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Receive salary for all work as employee of Manulife Financial which includes work not covered by registration rules.

N/A

Total

(b) RECEIPTS—THINGS OF VALUE

During this 6 month reporting period, have you received any thing of value⁴ other than money from any foreign principal named in Items 8, 9 and 10 of this statement, or from any other source, for or in the interests of any such foreign principal? Yes ☐ No ☒

If yes, furnish the following information:

<i>Name of foreign principal</i>	<i>Date received</i>	<i>Description of thing of value</i>	<i>Purpose</i>
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N/A

³A registrant is required to file an Exhibit D if he collects or receives contributions, loans, money, or other things of value for a foreign principal, as part of a fund raising campaign. See Rule 201(e).
⁴Things of value include but are not limited to gifts, interest free loans, expense free travel, favored stock purchases, exclusive rights, favored treatment over competitors, "kickbacks," and the like.

15. (a) **DISBURSEMENTS—MONIES**

During this 6 month reporting period, have you

(1) disbursed or expended monies in connection with activity on behalf of any foreign principal named in Items 8, 9 and 10 of this statement? Yes ☐ No ☒(2) transmitted monies to any such foreign principal? Yes ☐ No ☒

If yes, set forth below in the required detail and separately for each foreign principal an account of such monies, including monies transmitted, if any, to each foreign principal.

<i>Date</i>	<i>To Whom</i>	<i>Purpose</i>	<i>Amount</i>
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No special expenses related to this activity.

	N/A
<hr/>	
Total	

15. (b) DISBURSEMENTS—THINGS OF VALUE

During this 6 month reporting period, have you disposed of anything of value² other than money in furtherance of or in connection with activities on behalf of any foreign principal named in items 8, 9 and 10 of this statement?

Yes ☐ No ☒

If yes, furnish the following information:

<i>Date disposed</i>	<i>Name of person to whom given</i>	<i>On behalf of what foreign principal</i>	<i>Description of thing of value</i>	<i>Purpose</i>
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N/A

(c) DISBURSEMENTS—POLITICAL CONTRIBUTIONS

During this 6 month reporting period, have you from your own funds and on your own behalf either directly or through any other person, made any contributions of money or other things of value in connection with an election to any political office, or in connection with any primary election, convention, or caucus held to select candidates for political office?

Yes ☐ No ☒

If yes, furnish the following information:

<i>Date</i>	<i>Amount or thing of value</i>	<i>Name of political organization</i>	<i>Name of candidate</i>
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N/A

V—POLITICAL PROPAGANDA

(Section 1(j) of the Act defines "political propaganda" as including any oral, visual, graphic, written, pictorial, or other communication or expression by any person (1) which is reasonably adapted to, or which the person disseminating the same believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, or in any other way influence a recipient or any section of the public within the United States with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party or with reference to the foreign policies of the United States or promote in the United States racial, religious, or social dissensions, or (2) which advocates, advises, instigates, or promotes any racial, social, political, or religious disorder, civil riot, or other conflict involving the use of force or violence in any other American republic or the overthrow of any government or political subdivision of any other American republic by any means involving the use of force or violence.)

16. During this 6 month reporting period, did you prepare, disseminate or cause to be disseminated any political propaganda as defined above? Yes ☒ No ☐

IF YES, RESPOND TO THE REMAINING ITEMS IN THIS SECTION V.

NO MATERIALS SENT FROM THIS OFFICE.

17. Identify each such foreign principal.

The Manufacturers Life Insurance

Company

ANY MATERIALS SENT BY

M.V. HARCAR [Reg. No. 3910]

MULDOON, MURPHY & FAUCETTE

WASHINGTON, DC

² Things of value include but are not limited to gifts, interest free loans, expense free travel, favored stock purchases, exclusive rights, favored treatment over competitors, "kickbacks," and the like.

18. During this 6 month reporting period, has any foreign principal established a budget or allocated a specified sum of money to finance your activities in preparing or disseminating political propaganda? Yes ☐ No ☒

If yes, identify each such foreign principal, specify amount, and indicate for what period of time.

N/A

19. During this 6 month reporting period, did your activities in preparing, disseminating or causing the dissemination of political propaganda include the use of any of the following:

- ☐ Radio or TV broadcasts ☐ Magazine or newspaper articles ☐ Motion picture films ☒ Letters or telegrams
☐ Advertising campaigns ☐ Press releases ☐ Pamphlets or other publications ☐ Lectures or speeches
☐ Other (specify) _____

20. During this 6 month reporting period, did you disseminate or cause to be disseminated political propaganda among any of the following groups:

- ☐ Public Officials ☐ Newspapers ☐ Libraries
☒ Legislators ☐ Editors ☐ Educational institutions
☒ Government agencies ☐ Civic groups or associations ☐ Nationality groups
☒ Other (specify) **Treasury & Congressional staff**

21. What language was used in this political propaganda:

- ☒ English ☐ Other (specify) _____

22. Did you file with the Registration Section, U.S. Department of Justice, two copies of each item of political propaganda material disseminated or caused to be disseminated during this 6 month reporting period? Yes ☐ No ☒

Dissemination Reports filed by M.V. Harcar [Reg. No. 3910]

23. Did you label each item of such political propaganda material with the statement required by Section 4(b) of the Act?

- Yes ☒ No ☐

24. Did you file with the Registration Section, U.S. Department of Justice, a Dissemination Report for each item of such political propaganda material as required by Rule 401 under the Act? Yes ☐ No ☒

Dissemination Reports filed by M.V. Harcar [Reg. No. 3910]

VI-EXHIBITS AND ATTACHMENTS

25. EXHIBITS A AND B

- (a) Have you filed for each of the newly acquired foreign principals in Item 9 the following:

- Exhibit A Yes ☐ No ☐
 Exhibit B Yes ☐ No ☐ **N/A**

If no, please attach the required exhibit.

- (b) Have there been any changes in the Exhibits A and B previously filed for any foreign principal whom you represented during this six month period? Yes ☐ No ☒

- If yes, have you filed an amendment to these exhibits? Yes ☐ No ☐ **N/A**

If no, please attach the required amendment.

N/A

1. The information on this form is to be furnished to the Registration Section, U.S. Department of Justice, by the foreign principal or by the person who is in charge of the foreign principal's activities in the United States.

2. The information on this form is to be furnished to the Registration Section, U.S. Department of Justice, by the foreign principal or by the person who is in charge of the foreign principal's activities in the United States.

26. EXHIBIT C

If you have previously filed an Exhibit C¹, state whether any changes therein have occurred during this 6 month reporting period. Yes ☐ No ☒

N/A

If yes, have you filed an amendment to the Exhibit C? Yes ☐ No ☒

N/A

If no, please attach the required amendment.

N/A

27. SHORT FORM REGISTRATION STATEMENT

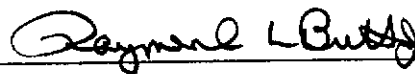
Have short form registration statements been filed by all of the persons named in Items 5 and 7 of the supplemental statement? Yes ☐ No ☒

If no, list names of persons who have not filed the required statement.

N/A

The undersigned swear(s) or affirm(s) that he has (they have) read the information set forth in this registration statement and the attached exhibits and that he is (they are) familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his (their) knowledge and belief, except that the undersigned make(s) no representation as to the truth or accuracy of the information contained in attached Short Form Registration Statement, if any, insofar as such information is not within his (their) personal knowledge.

(Type or print name under each signature)

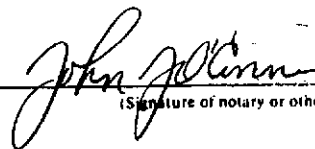


Raymond L. Britt, Jr.

Both copies of this statement shall be signed and sworn to before a notary public or other person authorized to administer oaths by the agent, if the registrant is an individual, or by a majority of those partners, officers, directors or persons performing similar functions who are in the United States, if the registrant is an organization.

Subscribed and sworn to before me at TORONTO, ONTARIO, CANADA

this 13th day of April, 19 92



(Signature of notary or other officer)

¹The Exhibit C, for which no printed form is provided, consists of a true copy of the charter, articles of incorporation, association, constitution, and bylaws of a registrant that is an organization. (A waiver of the requirement to file an Exhibit C may be obtained for good cause upon written application to the Assistant Attorney General, Criminal Division, Internal Security Section, U.S. Department of Justice, Washington, D.C. 20530.)

UNITED STATES DEPARTMENT OF JUSTICE
REGISTRATION UNIT
CRIMINAL DIVISION
WASHINGTON, D.C. 20530

NOTICE

Please answer the following questions and return this sheet in triplicate with your supplemental statement:

1. Is your answer to Item 16 of Section V (Political Propaganda - page 7 of Form OBD-64 - Supplemental Statement):

Yes X or No

(If your answer to question 1 is "yes" do not answer question 2 of this form.)

2. Do you disseminate any material in connection with your registration:

Yes or No

(If your answer to question 2 is "yes" please forward for our review copies of all such material including: films, film catalogs, posters, brochures, press releases, etc. which you have disseminated during the past six months.)

Ray Britt

Signature

4/13/92

Date

Raymond L. Britt, Jr.

Please type or print name of signatory on the line above

Esquire

Title

INTERNAL SECURITY
SECTION
REGISTRATION UNIT

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RAYMOND L. BRITT, JR., ESQ.
Investment Vice President
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Manulife Financial
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(416) 926-3291

MARY V. HARCAR, ESQ.
Washington Representative
5101 Wisconsin Avenue, NW
5th Floor
Washington, DC 20016
(202) 362-0840

TO: Robert A Katcher
Mary Gillmarten
Charles T. Plambeck
Internal Revenue Service

FROM: U.S. Federal Taxation Subcommittee ("Subcommittee")
Canadian Life and Health Insurance
Association (CLHIA)*

DATE: September 24, 1990

RE: Treas. Reg. §1.882-5

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MEMORANDUM

Subcommittee Position Summary

For the reasons outlined in this memorandum, the members of the Subcommittee of the CLHIA maintain the position that section 882(c) and Treas. Reg. §1.882-5 do not apply to foreign insurance companies.

Foreign companies carrying on an insurance business in the United States are subject to taxation under Subchapter L of the Internal Revenue Code of 1986, as amended (the "Code"). See section 842(a). Subchapter L specifically sets out the income and deductions involved in the calculation of life insurance company taxable income and insurance company taxable income. These specific rules for the calculation of taxable income under Subchapter L control over the more general rules prescribed within Subchapter N.

* This letter has been issued by Raymond L. Britt, Jr., Esq. and Mary V. Harcar, Esq. Each issuer has registered as an agent of The Manufacturers Life Insurance Company, 200 Bloor Street East, Toronto, Ontario, Canada, M4W 1E5, under the Foreign Agents Registration Act. Registration materials are available for inspection at the Department of Justice, Washington, D.C. Such registration does not indicate approval by the U.S. Government of the contents of this letter.

Section 882(c)

Section 882(c)(1)(A) generally provides rules for the allowance of deductions and credits in the case of a foreign corporation. Section 882(c)(1) states a general rule that such deductions (a) must be effectively connected with conduct of a trade or business within the U.S., and (b) must be apportioned and allocated as provided in Treasury regulations.

Treas. Reg. §1.882-5 generally deals with how interest should be deducted from the "effectively connected income" ("ECI") of a U.S. branch of a foreign corporation. Historically, Treas. Reg. §1.882-5 has not been applied to foreign insurance companies. We believe that is the correct interpretation and that the IRS should continue to interpret that Treas. Reg. §1.882-5 does not apply to foreign insurance companies.

I. Specific Rules in the Code for the Taxation of a Foreign Insurance Company

Section 842¹ provides specific rules for the taxation of foreign companies carrying on an insurance business within the United States. Section 842(a)² provides a specific rule that if a foreign company carrying on an insurance business within the United States would qualify as an insurance company³ under Part I (Life Insurance Companies) or Part II (Other Insurance Companies) of Subchapter L of the Code if it were a domestic company (without regard to income not effectively connected with the conduct of any trade or business within the United States), then such company shall be taxable under Part I or II of Subchapter L⁴ on the income effectively connected with the conduct of any trade or business within the United States (its "ECI"). Even the caption of section 842(a) makes the point that taxation of such foreign companies occurs under Subchapter L of the Code. Section 842(a) also provides the rule that U.S. source non-ECI of such a foreign company is taxable as provided in section 881.

Section 881 is part of Subchapter N of the Code which sets out general rules for the Tax Based on Income from Sources Within or Without the United States.⁵ Subchapter N includes section 882 which sets out rules for the determination of taxable income and the imposition of tax on the ECI of a foreign company engaged in a trade or business within the United States.

Both the current structure of the Code and the legislative history of sections 842, 881 and 882 support the position that the general rules for the allowance of deductions and credits set out in section 882(c) and the regulations issued thereunder (including Treas. Reg. §1.882-5) are inapplicable to foreign life insurance companies which are taxed under the specific rules of Subchapter L. Instead, section 842(a) provides that such companies are taxed under Subchapter L and thus refer to the specific rules of Subchapter L for the allowance of deductions and credits in the determination of "life insurance company taxable income" as defined in section 801(b) ("LICTI")⁶ or "insurance company taxable income" as defined in section 832 ("ICTI")⁷.

In contrast to these specific references to the taxation of foreign companies carrying on an insurance business in the United States, the Code does not contain a similar section for the taxation of foreign companies carrying a banking business in the United States. Such a section might have referenced the rules for Taxation of Banking Institutions set out in Subchapter H (sections 581 through 596) of the Code. These rules provide specific banking reserve deductions. This structure of the Code supports the view that foreign banks are taxed under the general rules set out in Subchapter N and thus would be subject to section 882(c) and Treas. Reg. §1.882-5 whereas foreign insurance companies look to Subchapter L for the calculation of LICTI or ICTI and thus for the amount of allowable deductions.⁸

The view that Treas. Reg. §1.882-5 is inapplicable to foreign insurance companies is also supported by the Code and regulations issued under Subchapter N. These rules define ECI and specify that a foreign insurance company is taxable under Subchapter L on all its ECI whether or not that ECI is effectively connected with the conduct of the company's insurance business in the United States.⁹ Treas. Reg. §1.881-1(d)(1) provides that the determinations of whether a foreign insurance corporation is carrying on an insurance business within the United States and whether the corporation's income is ECI are to be made pursuant to the rules set forth in Code sections 864(b) and (c) and the Treasury Regulations thereunder.

The legislative history of the taxation of foreign life insurance companies and of sections 842, 881 and 882 supports the view that Subchapter L governs the deductions allowed in the calculation of LICTI and ICTI. Section 882(c) addresses the allowance of deductions and credits only for purposes of section 882(a) which, as stated above, governs the imposition of tax on foreign corporations which are not carrying on insurance trade or business in the United States. See Treas. Reg. §§1.881-1(d)(2)(ii) and (iii).

II. The Legislative History of the Code Sections Governing the Taxation of Foreign Insurance Companies

The Foreign Investors Tax Act of 1966 ("FITA")¹⁰ amended the Internal Revenue Code of 1954 (the "1954 Code") enacting new section 882 to make "effectively connected with" a U.S. trade or business the test of income of foreign companies which was to be taxed in the same manner as domestic companies. Further, FITA added a new section 842 (deleting "old section 842")¹¹ which provided that the ECI of a foreign insurance company would be taxed as if that foreign insurance company were a domestic insurance company.

Under the law prior to FITA, a foreign life insurance company carrying on a life insurance business in the United States was taxed on all its income attributable to that business in substantially the same manner as a domestic life insurance company. A footnote in the legislative history of FITA makes it clear that a foreign life insurance company that is not carrying on a life insurance business in the U.S. is taxable under the provisions applicable to foreign corporations generally.¹²

The FITA House Report notes that foreign insurance companies carrying on a life insurance business in the United States generally had been interpreting "old" section 842 as providing that they were not taxable on U.S. source income which is not income of the U.S. life insurance business of the company. Old section 842 had provided that the gross income of a life insurance company subject to tax imposed by section 802 was not to be determined in the manner provided in sections 861 through 864 relating to the determination of sources of income.

"New" section 842 [enacted as part of FITA] replaced all the existing provisions of parts I, II and III of Subchapter L which designate when and to what extent a foreign insurance company will be subject to the tax imposed pursuant to those parts. Under new section 842, only those foreign corporations carrying on an insurance business in the United States are subject to the provisions of Subchapter L which, were they domestic corporations, would qualify for the taxable year under part I, II or III of such subchapter without taking into account their income not effectively connected with the conduct of a trade or business within the United States.

The General Explanation included in the FITA House Report notes that:

.....the bill provides that a foreign corporation carrying on an insurance business within the United States is to be taxable in the same manner as domestic companies carrying

on a similar business with respect to its income which is effectively connected with the conduct of a trade or business within the United States. The remainder of the U.S. source income of this type of a corporation is to be taxed in the same manner as income of other foreign corporations which is not effectively connected to a U.S. trade or business; that is, at a flat 30 percent (or lower treaty) rate. The determination of whether a foreign insurance company qualifies for the special domestic insurance treatment is to be made by considering only the income of the corporation which is effectively connected with the conduct of its insurance business carried on in the United States.¹³

The Technical Explanation in the FITA House Report contains a more specific reference to taxation under Subchapter L:

"Each such corporation which would so qualify for the taxable years under either Part I, II or III of Subchapter L shall be taxable for such year under that part on its entire taxable income (whether received from sources within or without the U.S.) which is effectively connected with its conduct of any trade or business (whether or not it is insurance business) within the United States. In determining such taxable income, only allowable deductions which are connected with the income which is effectively connected with the conduct of a trade or business within the United States are to be allowed".¹⁴

The House Technical Explanation reiterates that any income derived by such foreign corporation from sources within the United States which is not effectively connected with the conduct of any trade or business in the U.S. is taxed for such year as provided in section 881 as amended by FITA. The Technical Explanation also differentiates the role of section 882:

"Each such foreign corporation which would not so qualify for the taxable year under part I, II or III of Subchapter L and all foreign insurance companies not carrying on an insurance business in the United States, shall be taxable as provided in amended sections 881 or 882 with respect to other foreign corporations."¹⁵ [Emphasis added.]

In determining whether income is derived from sources within or without the United States for purposes of applying Subchapter L, as amended by FITA, the legislative history states that the provisions of sections 861 through 864 shall apply. In determining for purposes of Subchapter L whether a foreign corporation is carrying on an insurance business in the U.S., and whether income is effectively connected with the conduct of a trade or business within the U.S., section 864(b) and (c) added by FITA, shall apply.¹⁶

The General Explanation of both the House and the Senate Reports to FITA refer to the NAIC statement as the source of the amount of income "effectively connected" to the insurance business in the U.S.:

For purposes of determining whether or not income of a foreign life insurance company is effectively connected with the conduct of its U.S. life insurance business, the annual statement of its U.S. business on the form approved by the National Association of Insurance Commissioners will usually be followed. 1966-2 CB 989, 1033, 1085. It is noted that all the income effectively connected with the foreign life insurance company's U.S. life insurance business, from whatever source derived, comes within the ambit of this provision. This a continuation of present law which subjects to U.S. tax all the income attributable to the U.S. life insurance business from whatever source derived.¹⁷

Both the House and Senate Explanations note that in determining taxable income "only allowable deductions which are connected with income which is effectively connected with the conduct of a trade or business within the U.S. are to be allowed." Presumably, this is a reference to the deductions allowed by part I of Subchapter L.

*

Conclusion

Based upon the legislative history of the taxation of life insurance companies, the Subcommittee asserts that the Code plainly distinguishes the taxation of insurance companies (taxed on their ECI pursuant to the specific rules of Subchapter L) from taxation of foreign companies pursuant to the more general rules of Subchapter N. The FITA legislative history notes that the NAIC Annual Statement is the statement which sets out the amounts of income and deductible expenses of the foreign company carrying on a life insurance business in the United States to be used in calculating its taxable income under Subchapter L. It is not reasonable to conclude that either prior or subsequent to passing through the specific rules of Subchapter L, foreign companies are expected to pass their expenses through the provisions of Treas. Reg. §1.882-5.

FOOTNOTES

- ¹ Unless otherwise specified, all sections referenced herein are to the Internal Revenue Code of 1986, as amended (the "Code") and to Treasury regulations issued thereunder.
- ² **Sec. 842. Foreign companies carrying on insurance business.**
- (a) Taxation under this subchapter.**
- If a foreign company carrying on an insurance business within the United States would qualify under part I or II of this subchapter for the taxable year if (without regard to income not effectively connected with the conduct of any trade or business within the United States) it were a domestic corporation, such company shall be taxable under such part on its income effectively connected with its conduct of any trade or business within the United States. With respect to the remainder of its income which is from sources within the United States, such a foreign company shall be taxable as provided in Section 881.
- ³ Foreign companies which carry on a life insurance trade or business in the U.S. must qualify as life insurance companies under the Code as well as under state law. Foreign companies operate in the U.S. either in branch form or by means of a U.S. subsidiary. Generally, the home state of either the branch or the U.S. subsidiary imposes more regulatory control on the operation of the U.S. business of a foreign company (termed an "alien" insurance company) than those imposed upon domestic insurers.

For example, the State of Michigan is the home state for most of the Canadian life insurance companies with U.S. operations. Most of the companies operate in the U.S. in branch form. Generally, Michigan law treats the branch operation as a domestic operation in that it is subject to all the state insurance regulations imposed on domestic insurers. Additionally, since the Canadian life insurance companies are organized under the laws of Canada, they are subject to certain restrictions which do not apply to other insurers. To transact business in Michigan, Canadian companies carrying on a U.S. insurance business (through a branch) must maintain deposits with the State Treasurer or with a U.S. trustee, under a trust agreement approved by the Insurance Commissioner. The trust agreement is intended to ensure that an insurer has sufficient assets to cover liabilities with respect to the insurer's business in the U.S.

Additionally, the Canadian companies operating a life insurance branch in Michigan are subject to general Michigan law which regulates for all insurers the types of investments and holdings that can be legitimately considered assets. This combined regulatory environment is intended to control the American assets of the Canadian insurer.

Michigan law limits the nature of investments included in the trust and specifically limits how assets and investments are valued. The Michigan statute tightly regulates where the companies records are kept and the Insurance Commissioner has discretion in evaluating the adequacy of the insurer's assets.

Michigan statutes also require the registration of assets and liabilities of the effectively connected business on the Annual Statement filed by the insurance company on its U.S. business on the forms approved by the National Association of Insurance Commissioners (the "NAIC Annual Statement"). The NAIC Annual Statement sets forth, among other items, the assets and liabilities of the company from its U.S. insurance trade or business. The NAIC Annual Statement is subject to frequent audit by the Office of the Insurance Commissioner. Failure to accurately report assets and liabilities on the NAIC Annual Statement may lead to the loss of the company's license to sell insurance in the various states in which the NAIC Annual Statement is filed.

- 4 Subchapter L provides specific rules for the taxation of insurance companies. Sections 801-847 are within Subchapter L. Part I of Subchapter L, which relates to Life Insurance Companies, includes Code sections 801 through 818. Part II of Subchapter L, which pertains to other insurance companies, includes Code section 831 through 835.

- 5 Sections 881-999 are part of Subchapter N which sets out general rules for the "Tax Based on Income From Sources Within or Without the United States."

- 6 Section 801(b) defines "Life insurance company taxable income".

For purposes of this part, the term "life insurance company taxable income" means --

- (1) life insurance gross income, reduced by
- (2) life insurance deductions.

- 7 Section 832(a) defines "taxable income" in the case of a company subject to the tax imposed by section 831 to mean ". . . the gross income as defined in subsection (b)(1) less the deductions allowed by subsection (c).

- 8 We note that in Rev. Rul. 89-115, 1989-2 CB 4, the Internal Revenue Service ("IRS") has taken the position that Treas. Reg. §1.882-5 applies to the determination of the foreign bank's worldwide interest expense that is allowed as a deduction under Article 7(3) of the U.S.-U.K. Income Tax Treaty for the purposes of computing the profits of the bank's U.S. permanent establishment. This revenue ruling responds to a bank argument that Treas. Reg. §1.882-5 was, in effect, overridden by the "business profits" article of the U.S.-U.K. Income Tax Treaty. In Rev. Rul. 89-115, the IRS concluded that because the U.S.-U.K. Income Tax Treaty does not provide a specific rule for the allocation of interest expense to the profits of a permanent establishment, the treaty requires that the laws of the U.S. govern the determination of the expenses that are "incurred for the purposes of the permanent establishment" and the laws of the U.S. provide that the interest deduction allowed be determined pursuant to Treas. Reg. §1.882-5. This determination, in turn, was based upon the premise that apportionment of certain expenses (including interest) is consistent with taxation under the "business profits" article of the treaty since the "business profits" article requires that a permanent establishment be taxed as a distinct and separate enterprise.

As outlined in this memorandum, the Code itself directs that foreign insurance companies file their tax returns under Subchapter L (as opposed to section 882 of the Code), and the legislative history makes it clear that the deductions (and income) to be used within the framework of Subchapter L are the items on the Annual Statement filed by the insurance company on its U.S. business on the forms approved by the National Association of Insurance Commissioners (the "NAIC Statement"). This contrasts with the general framework referenced by foreign banks in filing their U.S. tax returns since foreign banks file their tax returns pursuant to section 882 of the Code.

- 9 Treas. Reg. §1.881-1(d)(1) states ---

(d) Rules applicable to foreign insurance companies— (1) Corporations qualifying under subchapter L. A foreign corporation carrying on an insurance business in the United States at any time during the taxable year, which, without taking into account its income not effectively connected for the taxable year with the conduct of a trade or business in the United States, would qualify for the taxable year under Part I, II or III of Subchapter L if it were a domestic corporation, shall be taxable for such year under that part on its entire taxable income (whether derived from sources within or without the United States) which is, or which pursuant to section 882(d) or (e) and §1.882-2 is treated as, effectively connected for the taxable year with the conduct of any trade or a business (whether or not its insurance business) in the United States. Any income derived by that foreign corporation from sources within the United States which is not effectively connected for the taxable year with the conduct of a trade or business in the United States is taxable as provided in section 881(a) and §1.882-1. See sections 842 and 861 through 864, and the regulations thereunder.

- 10 P.L. 89-809, 89th Cong., 2d Sess. (1966).
- 11 All references herein to "old" section 842 refer to the section in effect prior to the enactment of FITA. References to "new" section 842 refer to that section as amended by FITA.
- 12 See 1966-2 CB 988. H.R. Rep. No. 1450, 89th Congress, 2d Sess. ("FITA House Report"), 1966-2 CB 967. The "FITA Senate Report" refers to S. Rep. No. 1707, 89th Cong., 2d Sess., 1966-2 CB 1055. See also 1966-2 CB 1085.
- 13 FITA House Report, 1966-2 CB 989.
- 14 See FITA House Report, 1966-2 CB 1033.
- 15 See FITA House Report, 1966-2 CB 1033.
- 16 FITA House Report, 1966-2, CB 1033.
- 17 FITA House Report, General Explanation, 1966-2 CB 989. Pursuant to section 500.411(a) of the Michigan Insurance Code of 1956, Canadian insurance companies operating through Michigan are to report debts only to U.S. persons on the NAIC Annual Statement. Section 500.411(a) states that "[t]he deposits (of an alien insurer in Michigan) shall not be less than the amount of liabilities with respect to the insurer's business in the United States." The Office of the Michigan Insurance Commissioner interprets this requirement to be a reference to debt to U.S. persons connected with the insurer's business in the United States.

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MEMORANDUM

TO: Chisoon Lee, Attorney Advisor
International Tax Counsel
Department of Treasury

FROM: Raymond L. Britt, Jr.*, Mary V. Harcar, Esq. and
Mary M. McDonald

DATE: December 10, 1990

RE: Treas. Reg. §1.882-5 and Life Insurance Company
Taxation

RECEIVED
DEPT. OF JUSTICE
CRIMINAL DIVISION
92 APR 10 1991
INTERNAL SECURITY
SECTION
REGISTRATION UNIT

Pursuant to Treas. Reg. §1.882-5, the amount of interest expense deductible by a foreign corporation for U.S. tax purposes is determined by applying a worldwide allocation formula rather than by reference to the amount of actual interest expense paid to generate U.S. effectively connected income ("ECI"). The Subcommittee is concerned that the application of Treas. Reg. §1.882-5 will result in the disallowance for U.S. tax purposes of significant amounts of U.S. customer liability expenses. This could force Canadian life insurance companies out of some, and potentially all, U.S. life insurance product markets. The Subcommittee believes this disallowance of U.S. expenses violates the Business Profits Article (Article VII) and the Nondiscrimination Article (Article XXV) of the U.S.-Canada Income Tax Treaty.

The Subcommittee requests clarification that (1) Treas. Reg. §1.882-5 does not apply to Canadian life insurance companies, or alternatively, that (2) Treas. Reg. §1.882-5 does not apply to U.S. customer liabilities and the related interest credited to U.S. customer liabilities.

* This memorandum has been issued by Raymond L. Britt, Jr., Esq., Mary V. Harcar, Esq. and Mary M. McDonald. Both Raymond L. Britt and Mary V. Harcar have registered as an agent of The Manufacturers Life Insurance Company, 200 Bloor Street East, Toronto, Ontario, Canada, M4W 1E5, under the Foreign Agents Registration Act. Mary V. Harcar has registered as an agent of the Canadian Life and Health Insurance Association ("CLHIA"). Registration materials are available for inspection at the Department of Justice, Washington, D.C. Such registration does not indicate approval by the U.S. Government of the contents of this memorandum. This material is submitted on behalf of the U.S. Federal Income Taxation Subcommittee of the CLHIA (the "Subcommittee").

If the IRS subjects Canadian life insurance companies to Treas. Reg. §1.882-5, the Subcommittee believes it will create an inappropriate, unreasonable and excessive U.S. tax burden for Canadian life insurance companies operating in the U.S. The application of Treas. Reg. §1.882-5 could result in a Canadian life insurance company which sells guaranteed investment contracts ("GICs") having a U.S. tax liability attributable to GIC sales which exceeds 300% of its actual GIC pre-tax profits. Coupled with the adverse discriminatory impact of section 842(b),[†] this could force Canadian life insurance companies to either subsidize their U.S. businesses or get out of some, and potentially all, U.S. insurance product markets. Solely because of the U.S. tax environment, Canadian life insurance companies, which have for decades successfully carried on life insurance businesses in the U.S. through branch operations, are being forced to subsidize their U.S. businesses in order to survive. Unfortunately, subsidization may not be a viable solution because it is very costly to implement and may, in fact, be impossible to implement for certain lines of business.

Although the Subcommittee believes that the application of Treas. Reg. §1.882-5 will have a significant adverse impact on Canadian life insurance companies, there is so much uncertainty surrounding precisely how Treas. Reg. §1.882-5 would apply to insurance companies that it is virtually impossible for Canadian life insurance companies to assess the exact impact of applying the regulation. In our discussions with IRS representatives about Treas. Reg. §1.882-5, the drafters of the regulations stated that they do not intend to provide guidance or interpretations on what is included as "liabilities" or "interest expense" for purposes of Treas. Reg. §1.882-5.

The Subcommittee objects to the application of formulae, such as found in Treas. Reg. §1.882-5, to determine ECI for U.S. tax purposes. The Subcommittee believes that the calculation of ECI should be based upon the actual income and actual expenses reported in a Canadian life insurance company's NAIC Statement (the annual financial statement submitted by both U.S. and foreign life insurance companies to the U.S. insurance regulators) and that there is no need to use a formula to determine the appropriate interest expense deduction for U.S. tax purposes, particularly if the impact of that formula is to deny an interest deduction for interest paid in connection with U.S. customer liabilities.

[†] Section 842(b) operates to impute a calculated amount of surplus and investment yield to a foreign insurance company taxable under section 842.

The Subcommittee is concerned that Canadian life insurance companies are currently subject to two, and potentially three (if Treas. Reg. §1.882-5 applies), formulary determinations of ECI income and expenses. These include section 842(b), which defines minimum effectively connected net investment income, section 884, which applies formulae in the calculation of a company's branch tax liability, and now potentially Treas. Reg. §1.882-5, which uses a formula to determine the deductible amount of interest expense. Compounding the unreasonableness of the use of formulae is the fact that the formulae and definitions used in sections 842(b) and 884 and Treas. Reg. §1.882-5 are not consistent.

The Subcommittee believes that both section 842(b) and Treas. Reg. §1.882-5 clearly violate the U.S.-Canada Income Tax Treaty. Although the Subcommittee feels that Treas. Reg. §1.882-5 should not apply to life insurance companies, if the regulations are drafted to include a statement that Treas. Reg. §1.882-5 applies to life insurance companies, then customer liabilities and interest credited to those customer liabilities should be excluded from the definition of liabilities and interest expense for purposes of Treas. Reg. §1.882-5.

The fungibility theory which is the cornerstone of the interest expense allocation method set out in Treas. Reg. §1.882-5 is premised on the notion that money is fungible and that interest expense is attributable to all activities and property regardless of any specific purposes of incurring an obligation on which interest is paid. See T.D. 7749, 1981-1 C.B. 390, 392.

Any allocation of interest expense will distort the amount of taxable income if the allocation causes the amount deductible to differ from the actual amount paid. However, in the case of an insurance company, the application of an allocation formula causes an even greater distortion because of the combined impact of section 842(b).† It is the Subcommittee's position that the imposition of section 842(b) on insurance companies eliminates the appropriateness of the fungibility approach with respect to insurance companies taxed under section 842(b). Furthermore, even without section 842(b), state insurance regulators control a life insurance company's flexibility in connection with borrowings in that state insurance regulators require that a foreign insurance company have assets exceeding the amount of the company's U.S. liabilities. Therefore, a foreign insurance company cannot report borrowings in its NAIC Statement without also reporting a corresponding amount of assets.

† Section 842(b) taxes a foreign insurance company based on the greater of a minimum amount of surplus and a minimum amount of net investment income, or the foreign insurance company's actual effectively connected surplus and actual net investment income.